

REMARKS

Applicants have amended claims 1-66. No new matter has been added. Additionally, Applicants believe that the foregoing comments overcome the rejections set forth in the August 16, 5 2005 Office Action.

I. THE EXAMINER'S REJECTIONS

35 U.S.C. § 103

The Examiner rejected Claims 1, 2, 4-6, 9-20, 22-39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over 10 Ruffolo *et al.*, U.S. Patent Number 6,236,807 (hereinafter "Ruffolo") in view of Yamamoto *et al.*, U.S. Patent Number 4,968,487 (hereinafter "Yamamoto") or Tanner *et al.*, U.S. Patent Number 6,627,857 (hereinafter "Tanner") and Millan, U.S. Patent Number 6,278,840 (hereafter "Millan") or Junkel, U.S. Patent 15 Number 6,044,202 (hereafter "Junkel"). The Examiner stated that Ruffolo *et al.*:

20 "shows an air freshener with a housing for holding a circuit having a light emitting diode, a heater disposed in a ceramic block for conducting or radiating heat, electrical connectors to receive current from a power source, a container made of translucent material, a decorative shield, a wick inserted in the container, the housing with a socket for holding the container, and a dome 25 for venting out of facilitating the release of a heated substance." Office Action dated August 16, 2005, page 2.

The Examiner cited Yamamoto and Tanner to teach air fresheners with a plurality of light sources to illuminate an air freshener. *Id.* Therefore, the Examiner contended that "in view of Yamamoto and Tanner, it would have been obvious to one of ordinary skill in the art to adapt Ruffolo with a plurality of light sources such as the light emitting diodes to illuminated [sic] in the air freshener to show various functions or indications of the freshener." Office Action dated August 16, 2005, pages 2-3.

10 The Examiner cited Millan and Junkel to show an air freshener "with a resistor as the heater." Office Action dated August 16, 2005, page 3. As a result, the Examiner contended that "in view of Millan and Junkel, it would have been obvious to one of ordinary skill in the art to adapt Ruffolo with the 15 resistor as the heater to alternatively provide the necessary power to heat the volatile substance, and further adapt with a rectifier." *Id.*

Next, the Examiner rejected claims 3, 21, 47, 48, 53-55, and 58-66 as unpatentable over Ruffolo in view of Yamamoto and 20 Tanner, and Millan or Junkel in further view of Wattson, U.S. Patent Number 3,373,341 (hereinafter "Wattson") or Roland *et al.*, U.S. Patent Number 3,386,005 (hereinafter "Roland"). The Examiner admitted that Ruffolo in view of Millan or Junkel does not teach the apparatus with a shunt diode including a full-wave

bride rectifier. See Office Action dated August 16, 2005, page

4. The Examiner cites Wattson and Roland for showing this feature. *Id.*

Next, claims 7, 8, 40 and 41 were rejected as unpatentable 5 over Ruffolo in view of Yamamoto and Tanner, Millan or Junkel in further view of Muderlak *et al.*, U.S. Patent Number 5,175,791 (hereinafter "Muderlak"). The Examiner cited Muderlak to teach an air freshener with an electrical thermal fuse to prevent overheating, while admitting that the combination of Ruffolo and 10 Millan or Junkel does not teach this limitation. *Id.*

Finally, the Examiner rejected claims 56 and 57 as unpatentable over Ruffolo in view of Yamamoto and Tanner, Millan, Junkel, Wattson, and Roland in further view of Muderlak. The Examiner admitted that the combination of Ruffolo, Millan, 15 Junkel, Wattson, and Roland failed to teach a device with an electrical thermal fuse. See Office Action dated August 16, 2005, page 5. According to the Examiner, Muderlak is cited to "show an air freshener with an electrical thermal fuse to prevent overheating." *Id.*

20 **II. THE EXAMINER'S REJECTIONS SHOULD BE WITHDRAWN**

In order for a claimed invention to be obvious, either alone or in view of a combination of references, three criteria must be met: 1) there must exist a suggestion or motivation to modify the reference or to combine reference teachings; 2) there

must be a reasonable expectation of success; and 3) the prior art references, when combined, must teach or suggest all of the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MANUAL OF PATENT EXAMINING PROCEDURE § 2143-2143.03.

5 Applicants respectfully submit that no combination of references teach the claim limitations as amended of the present invention.

All of the Examiner's rejections rely on Ruffolo. In the Examiner's view, Ruffolo contains a decorative shield and teaches the present invention except for the use of a plurality 10 of light emitting diodes. However, Ruffolo fails to teach a decorative cover as required by the amended independent claims.

As shown in FIG. 6 of the present application, the decorative cover of the present invention is semi-cylindrically shaped. It attaches to the housing such that a gap is formed 15 between it and the housing. In addition, it covers at least a portion of the container. It is made of translucent material which allows it to be illuminated by the associated light emitting diodes. As such, it is incapable of dissipating fragrance. The cover functions to provide a large surface area 20 to improve the illuminating capabilities of the apparatus.

In contrast, as shown in FIGS. 1-3, Ruffolo teaches a decorative flange **20** which is attached to housing **50**. The specification discloses that "[t]he cover includes a decorative upwardly and outwardly extending flange **20** that mimics the

leaves of a plant, the petals of a flower or other simulative shape. This shape helps conceal the dome, helps dissipate the evaporated air freshener and decorate the product." Col. 3, lns. 38-43. Accordingly, the flange **20** and the decorative cover 5 of the present invention are different structures which perform different functions. Therefore, Ruffolo fails to disclose the decorative cover of the present invention.

Yamamoto and Tanner were cited merely to teach an air freshener with a plurality of light sources. Millan and Junkel 10 were cited to show an air freshener with a resistor that acts as a heater. See Office Action, page 3. Watson and Roland were cited to teach the use of a shunt diode as a full-wave bridge rectifier. See Office Action, page 4. Muderlak was cited merely to teach the use of a thermal fuse to prevent 15 overheating. *Id.* None of the references teach an air freshener and nightlight which utilizes a plurality of light emitting diodes to illuminate a decorative cover as required by every amended independent claim.

Since no combination of Ruffolo, Yamamoto, Millan, Junkel, 20 Watson, Roland, Tanner, or Muderlak teaches each and every claim limitation, the Examiner's rejections should be withdrawn.

In addition, an obviousness rejection is improper unless the prior art relied upon suggests the proposed combination.

See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Indeed, the Examiner "has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination." *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 887, 8 USPQ2d 1468, 5 1475 (Fed. Cir. 1988); see also, *In re Mayne*, 104 F.3d 1339, 1342, 41 USPQ2d 1451, 1454 (Fed. Cir. 1997) ("When relying on numerous references or a modification of prior art, it is incumbent upon the examiner to identify some suggestion to combine references or make modification."). A finding of 10 obviousness is not warranted if, as in the present case, there is an absence of such teaching, suggestion or motivation. See *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997). The prior art references relied upon by the Examiner fail to provide any 15 teaching, suggestion or motivation for the combination asserted by the Examiner in rejecting the pending claims. It is well settled that:

"Obviousness cannot be established by combining the 20 teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so." *ACS Hospital Systems Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Specifically, Applicants respectfully submit that there is no motivation for the combination of Ruffolo in view or Millan, Junkel, Watson, Roland, Jackson, Patel, and Muderlak. In the present rejection, the Examiner stated, with respect to the 5 combination of Ruffolo and Yamamoto and Tanner "it would have been obvious to one of ordinary skill in the art to adapt Ruffolo with a plurality of light sources such as the light emitting diodes to illuminated [sic] in the air fresher to show various functions or indications of the freshener (emphasis 10 added)." See Office Action, page 3.

Applicants respectfully submit that the proffered motivation is improper and would not result in the present invention. The Examiner admits that the combination of Ruffolo, Yamamoto and/or Tanner merely yields a vaporizer device with a 15 plurality of light emitting diodes which are used to show various functions or indications of the freshener. Indeed, each of the references enumerated above utilizes a light emitting diode merely to indicate whether the apparatus is active or not (i.e., whether the apparatus is functioning). Any 20 combination of these references would possibly result in an air freshener containing several light sources, each of which would merely show functions of the air freshener. This is in stark contrast to the present invention, which utilizes a plurality of light emitting diodes to illuminate a decorative cover which

acts as a traditional nightlight. Accordingly, the motivation to combine the references proffered by the Examiner would not yield the present invention as amended. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness and 5 the rejection should be withdrawn

In addition, the cited references provide no such motivation or incentive for the combination suggested by the Examiner. Therefore, the obviousness rejection could only be the result of a hindsight view with the benefit of Applicant's 10 specifications. This type of analysis is inappropriate:

"To draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction -- an illogical and inappropriate process by which to determine 15 patentability. The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." 20 *Seasonics v. Aerosonic Corp.* 38 USPQ 2d 1551, 1554 (1996) (citations omitted).

In addition, the combination advanced by the Examiner is not legally proper -- on reconsideration the Examiner will 25 undoubtedly recognize that such a position is merely an "obvious to try" argument.

At best, it might be obvious to *try* such a modification, but of course, "obvious to try" is not the standard for obviousness under 35 U.S.C. § 103. *Hybritech, Inc. v. 30 Monoclonal Antibodies, Inc.*, 231 USPQ 81, 91 (Fed. Cir. 1986).

Under the circumstances, Applicants respectfully submit that the Examiner has succumbed to the "strong temptation to rely on hindsight." *Orthopedic Equipment Co. v. United States*, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed. Cir. 1983):

5 "It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claim in suit. Monday morning quarter backing is quite improper when resolving the 10 question of non-obviousness in a court of law." *Id.*

Applicants submit that the only "motivation" for the Examiner's combination of the references is provided by the teachings of Applicant's own disclosure. No such motivation is 15 provided by the references themselves.

Thus, the present invention, for the first time, discloses novel methods and apparatus for air fresheners with nightlight capabilities. This represents a vast improvement over the prior art. Further, the cited references neither teach nor suggest 20 the novel and nonobvious features of this invention.

Therefore, the combination of references is not proper and the rejection of the claims should be withdrawn.

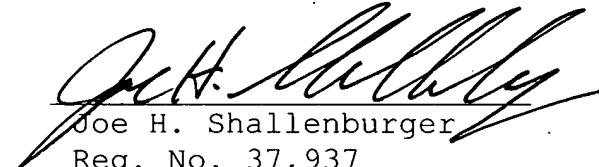
CONCLUSION

Applicants submit that the specification, drawings, and all pending claims represent a patentable contribution to the art and are in condition for allowance. No new matter has been 5 added. The claims have been amended merely to clarify the novel features of the current invention, the amendments are in no way related to patentability. Early and favorable action is accordingly solicited.

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Respectfully submitted,

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